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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KEVIN RISTO, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

SCREEN ACTORS GUILD-
AMERICAN FEDERATION OF
TELEVISION AND RADIO
ARTISTS, a Delaware corporation;
AMERICAN FEDERATION OF
MUSICIANS OF THE UNITED
STATES AND CANADA, a California
nonprofit corporation; RAYMOND M.
HAIR, JR., an individual, as Trustee of
the AFM and SAG-AFTRA Intellectual
Property Rights Distribution Fund;
TINO GAGLIARDI, an individual, as
Trustee of the AFM and SAG-AFTRA
Intellectual Property Rights
Distribution Fund; DUNCAN
CRABTREE-IRELAND, an individual,
as Trustee of the AFM and SAG-
AFTRA Intellectual Property Rights
Distribution Fund; STEFANIE TAUB,

Case No. 2:18-cv-07241-CAS-PLA

Class Action

**DECLARATION OF STEFANIE
TAUB IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION**

Date: September 14, 2020

Time: 10:00 a.m.

Dept.: 8D

Judge: Hon. Christina A. Snyder

1 an individual, as Trustee of the AFM
2 and SAG-AFTRA Intellectual Property
3 Rights Distribution Fund; JON JOYCE,
4 an individual, as Trustee of the AFM
5 and SAG-AFTRA Intellectual Property
6 Rights Distribution Fund; BRUCE
7 BOUTON, an individual, as Trustee
8 of the AFM and SAG-AFTRA
9 Intellectual Property Rights
10 Distribution Fund; and DOE
11 RESPONDING PARTY 1-10,

Responding Party.

DECLARATION OF STEFANIE TAUB

I, Stefanie Taub, declare as follows:

1. Since April 15, 2018, I have served as Chief Executive Officer of the AFM & SAG-AFTRA Intellectual Property Rights Fund (“the Fund”). Prior to that, I served as a Trustee of the Fund for approximately six years. I am also a Defendant in this action. I submit this declaration in support of the Defendants’ opposition to the Motion for Class Certification filed by Plaintiff Kevin Risto in this action. If called to testify, I could and would testify as to the following facts based on my personal knowledge and based on information compiled by Fund staff at my direction.

2. The Copyright Act establishes a statutory license that allows certain digital music services (e.g., Sirius XM Satellite Radio), webcasts, and internet radio, to play copyrighted sound recordings so long as those services comply with the rates and terms of the statutory license. As part of this statutory scheme, the Fund is tasked with receiving from SoundExchange (a royalty collection organization) a portion of the royalties from music services that use the statutory license and distributing those royalties to non-featured performers who contributed to the recordings performed by those services.

3. Each annual influx of royalties received by the Fund from SoundExchange inaugurates a new “distribution cycle” in which the Fund determines how many of the tens of thousands of eligible recordings it will research and attempt to pay royalties on. In the past few distribution cycles, the songs in connection with which the Fund has distributed royalties (“Covered Recordings”) have numbered from around 14,000 to 16,000 individual songs per cycle.

4. The Fund distributes royalties in connection with this substantial, but limited, number of Covered Recordings to ensure that it focuses its research efforts on recordings for which significant royalties are due to non-featured performers, rather than devoting time and energy to researching recordings that were scarcely

1 played on SiriusXM, for example, and thus have generated only a few pennies or
2 dollars in statutory royalties.

3 5. After the scope of Covered Recordings is determined in connection
4 with a distribution cycle, the Fund attempts to distribute royalty payments to the
5 non-featured performers who appear on the Covered Recordings. The Fund's
6 research department looks at multiple sources to identify and locate the correct non-
7 featured performer(s) who performed on Covered Recordings, chief among them the
8 information provided by the AFM and SAG-AFTRA (the "Unions") pursuant to the
9 Data Purchase and Services Agreement (the "Agreement") entered into by the Fund
10 and the Unions on July 22, 2013.

11 6. Pursuant to the Agreement, the Unions provide the Fund with access to
12 session reports (also referred to by the AFM as B-Forms) and other information
13 necessary to identify and contact royalty recipients. These session reports are
14 originally submitted by the producers of Covered Recordings following the relevant
15 recording session, and are designed to list all non-featured performers (both Union
16 members and non-members) who appear on the Covered Recordings.

17 7. The Data Purchase and Service Agreement, and the Service Fee paid to
18 the Unions pursuant to the Agreement, has been disclosed in the Fund's
19 Consolidated Financial Statements ("Annual Reports") for each year following
20 implementation of the Service Fee.

21 8. To obtain session reports for Covered Recordings, Fund researchers
22 make individual email inquiries to the Unions' local chapters, where the staff locate
23 the requested records (which in some instances are still maintained by the locals in
24 hard copy form) and transmit them to the Fund researchers. In addition, the Unions
25 provide the Fund with identifying information from their member databases (e.g.,
26 Social Security numbers, addresses) for non-featured performers who appear on
27 Covered Recordings. This data includes identifying information both for current
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1 Union members as well as for non-members (e.g., former members, performers who
2 have worked on Covered Recordings but have not joined, deceased performers, etc.).

3 9. When a performer who appears on a Covered Recording is located, the
4 Fund's Research Department contacts the individual to confirm his or her
5 participation on the given recording. Once the Fund confirms it has identified the
6 correct individual, the performer completes a Participant Information Form to
7 receive royalties. Another department within the Fund, Participant Services, then
8 reviews and processes the performer's submitted information, verifies its accuracy,
9 and ensures that a check is issued (or that a direct deposit is made). In each
10 distribution cycle since the implementation of the Services Agreement, the checks
11 and direct deposits that have been paid to participants have been subject to the 3%
12 fee paid to the Unions pursuant to the Agreement.

13 10. The Fund is not able to locate all non-featured performers who
14 performed on Covered Recordings. Often, session reports for Covered Recordings
15 will list the full name of a non-featured performer on the track, but will lack
16 additional identifying information (e.g., address, contact information) necessary to
17 locate the performer. In other cases, the session report will list only a partial name
18 or an apparent pseudonym of a non-featured performer, or a business entity
19 associated with a non-featured performer. When the Fund is able to obtain partial
20 identifying information for non-featured performers on Covered Recordings, the
21 Fund's researchers use resources such as LexisNexis, as well as social media (e.g.,
22 Facebook, Twitter, LinkedIn, SoundCloud), the online White Pages, and the internet
23 more generally to locate non-featured performers. Researchers also may consult the
24 networks of Fund employees who have extensive contacts within the music industry.

25 11. In some instances, the Fund is unable to locate any session report for a
26 Covered Recording, or else a session report can be located but doesn't list any non-
27 featured performers, despite the fact that instruments or background vocalists are
28 audible on the track. When no identifying information can be found from session

1 reports (and even when some information can be found), the Fund's researchers
2 check numerous online music credits resources to find and/or verify sound recording
3 credits, checking several sources if available.

4 12. If the Fund is unable to locate a performer after research is conducted,
5 the information about the performer that is known by the Fund is entered into an
6 Unclaimed Royalties list that is published on the Fund's website. When a
7 performer's full name is not available, entries on the Unclaimed Royalties list
8 include partial names, pseudonyms, and/or associated business entities.

9 13. The Fund engages in extensive outreach efforts to promote awareness
10 among non-featured performers of the existence of the Unclaimed Royalties list,
11 including but not limited to social media campaigns, advertising in trade
12 publications, formal presentations and presence at industry events, and
13 collaborations with other professional organizations. Fund staff routinely monitor
14 the Unclaimed Royalties list and attempt to track down performers on the list.

15 14. In each distribution cycle, the Fund allocates royalties to non-featured
16 performers whom the Fund has identified as having appeared on Covered
17 Recordings, but whom the Fund has so far been unable to locate ("Unclaimed
18 Royalties"). Unclaimed Royalties are allocated to any non-featured performer who
19 is known by the Fund to have appeared on a Covered Recording, regardless of
20 whether the Fund has any identifying information for the non-featured performer.

21 15. Beginning in 2018, the Fund began setting aside 1.5% of its royalty
22 distributions for payment of any additional claimants not represented on the
23 Unclaimed Royalties list who may have appeared on Covered Recordings, but about
24 whom the Fund was not aware when allocating royalties during the relevant
25 distribution cycle ("Unidentified Claimants"). To date, \$1,791,905 has been
26 allocated for the payment of Unidentified Claimants, which is separate from the pool
27 of funds set aside to satisfy requests for Unclaimed Royalties.

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1 16. When an Unidentified Claimant or a non-featured performer eligible
2 for Unclaimed Royalties is located, either through self-identification or through the
3 Fund's ongoing research efforts, such performer undergoes the Fund's previously-
4 explained participant intake process. Following calculation of the balance of the
5 royalties due to the performer from previous cycles, the performer is paid by the
6 Fund either via check or direct deposit. Since 2014, the Fund has processed requests
7 for Unclaimed Royalties from a total of 13,897 non-featured performers who were
8 once on the Unclaimed Royalties list.

9 17. The Fund deducts the Service Fee from the funds in the Unclaimed
10 Royalty pool at the point when the funds are allocated to the pool, rather than at the
11 point the funds are paid out from the pool. Likewise, the pool of funds allocated for
12 the payment of Unidentified Claimants is subject to Service Fee deductions at the
13 point these funds are set aside in this pool, rather than the point at which funds are
14 distributed from the pool.

15 18. The current total number of entries on the Unclaimed Royalties list is
16 27,024. This is not a precise count of the individuals represented in the Unclaimed
17 Royalty list. The figure is inexact because separate entries in the list may refer to
18 the same performer. Where, for example, the entry consists of only a business entity
19 name, or the instrument performed on a Covered Recording (e.g., "Bass 1"), it may
20 be the case that multiple entries refer to the same individual. Additionally, entries
21 referring to individuals with the same name (e.g., "John Jones") are itemized as
22 separate entries in the list until there is sufficient information to tie those entries
23 together to the same individual.

24 19. As described in Paragraph 14 above, the Fund maintains a pool of
25 Funds to satisfy future claims for Unclaimed Royalties. In Figure A below, the
26 column labeled "Unclaimed Performer Allocations" lists the number of non-featured
27 performers to whom Unclaimed Royalties were allocated by the Fund in each year
28 from 2011 to 2018, but whose royalties remain undistributed as of the time of this

filing. The column in Figure A labeled “Current Remaining Unclaimed Royalties” lists the corresponding amounts of royalties currently held by the Fund in order to satisfy these Unclaimed Performer Allocations from each of the relevant years.¹

Figure A

	Unclaimed Performer Allocations	Current Remaining Unclaimed Royalties
2011	8,932	\$2,504,484.80
2012	8,582	\$3,322,507.13
2013	8,268	\$6,973,739.49
2014	8,471	\$8,765,147.21
2015	10,324	\$9,410,874.28
2016	17,297	\$7,886,950.63
2017	15,901	\$7,656,072.46
2018	15,065	\$7,293,569.00


20. Recent amendments to the Fund’s Distribution Guidelines render all but certain that most performers currently on the Unclaimed Royalties list will not ultimately receive royalty distributions from the Fund. Pursuant to a March 2019 amendment to the Fund’s Distribution Guidelines, funds that are allocated for the payment of Unclaimed Royalties will not remain indefinitely in this pool moving forward. Rather, any funds that remain in the Unclaimed Royalties pool six years after receipt are to be distributed on a pro rata basis to the non-featured performers that the Fund has previously paid successfully.

¹ In his motion, Plaintiff states that the Fund has identified 61,298 non-featured performers on the Unclaimed Royalties list. This number corresponds with the number of remaining Unclaimed Performer Allocations from the years from 2011-2016 as of November 30, 2019. This number is higher than the total number of entries currently on the Unclaimed Royalties list (27,024) because many performers on the Fund’s Unclaimed Royalties list have been allocated Unclaimed Performer Allocations in multiple annual distribution cycles, and accordingly the total count of Unclaimed Performer Allocations across years is higher than the number of entries on the Unclaimed Royalties list.

1 21. The Fund has focused extensive efforts on identifying the non-featured
2 performers referred to in the Unclaimed Royalties list, and is hopeful that an
3 increasing portion of Unclaimed Royalties will be successfully paid in coming years.
4 However, based on the current rate at which non-featured performers are being
5 identified from the Unclaimed Royalties list, it is likely that after the six-year period
6 is complete, most of these funds will be distributed to non-featured performers to
7 whom the Fund has already located and successfully paid royalty distributions.

8 I declare under penalty of perjury under the laws of the United States of
9 America that the foregoing is true and correct.

10 Executed this 3rd day of August, 2020.

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14 _____
15 Stefanie Taub
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